

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ARTHUR A. ALLEN,

Plaintiff,

v.

UNITED STATES AIR FORCE,

Defendant.

NO: 2:15-CV-354-RMP

ORDER GRANTING DEFENDANT'S
MOTION FOR JUDGMENT

BEFORE THE COURT is Defendant's Motion for Judgment, ECF No. 23.

The Court has reviewed the motion and the record and is fully informed.

BACKGROUND

On June 28, 2016, the Court dismissed Plaintiff's First Amended Complaint, ECF No. 17, without prejudice. ECF No. 22. Plaintiff did not file an amended complaint. Defendant now seeks entry of Judgment and filed the present Motion for Judgment pursuant to Federal Rule of Civil Procedure 58(d).

ANALYSIS

A "dismissal without prejudice" does not confer success on the merits and "the defendant remains subject to the risk of re-filing." *See Oscar v. Alaska Dep't*

1 *of Educ. & Early Dev.*, 541 F.3d 978, 981 (9th Cir. 2008). In addition, “[a]
 2 dismissal without prejudice is not a final order from which a party may appeal.”
 3 *Broadnax v. Superior Court*, 18 F. App’x 515, 515 (9th Cir. 2001) (quoting *WMX*
 4 *Techs., Inc. v. Miller*, 104 F.3d 1133, 1136 (9th Cir. 1997)).

5 In this case, Defendants filed their motion for judgment along with a motion
 6 to expedite that motion. ECF No. 24. Despite the fact that the Court denied
 7 Defendant’s motion to expedite in order to provide Plaintiff an opportunity to
 8 respond to Defendant’s request for entry of judgment, Plaintiff has failed to do so.
 9 Pursuant to Local Rule 7.1(d), Plaintiff’s failure to respond may be deemed
 10 consent to an entry of an Order adverse to Plaintiff. Therefore, there is no basis for
 11 the Court to deny Defendant’s request for entry of judgment. However, Defendant
 12 has not provided any basis to enter judgment *nunc pro tunc* to June 28, 2016, and
 13 the Court will not do so.

14 Accordingly, **IT IS HEREBY ORDERED THAT:**

- 15 1. Defendant’s Motion for Judgment, **ECF No. 23**, is **GRANTED**.
- 16 2. Judgment for the Defendant shall be entered effective November 29, 2016.

17 The District Court Clerk is directed to enter this Order, enter Judgment as
 18 directed, provide copies to counsel, and **close this case**.

19 **DATED** this 29th day of November 2016.

20 s/ Rosanna Malouf Peterson
 21 ROSANNA MALOUF PETERSON
 United States District Judge